

**ZONING BOARD OF APPEALS**

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ZBA 2011-73  
Petition of Susan Miao  
7 Midland Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, December 1, 2011, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of SUSAN MIAO requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of 13.5 foot by 32.2 foot one-story addition, an 11 foot by 30 foot deck, and a 16 foot by 35 foot garage that will meet all setback requirements, on an existing nonconforming structure with less than required left side yard setbacks, at 7 MIDLAND ROAD, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On November 14, 2011 the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Susan Miao (the "Petitioner") and Tremont Miao. She said that it is a nonconforming structure on a conforming lot. She said that they would like to have a two-car garage and enclose an existing porch. The Board confirmed that there is a nonconforming left side yard setback.

The Board said that there was correspondence sent to the Board in opposition to the plan.

The Board said that the Planning Board thought that a two-story garage was proposed. The Board said that it is a single story two-car garage with cars parked end to end. The Board said that the proposed driveway will be located at the southeast side of the building and the existing driveway on the northwest side will be eliminated.

The Board said that on Sheet A-2 of the Architectural Drawings, the dimension that is shown from the right lot line to the building is 21.9 feet. The Board said that the plot plan shows that dimension as 20.3 feet. The Board said that both of the dimensions are compliant with the Zoning Bylaw. Mr. Miao said that the architectural drawings were made from a plot plan that was done a couple of years ago. He said that he sent the older plot plan out to the Architect. He said that the surveyor's plan is the accurate plan.

The Board asked if there will be a cathedral ceiling in the garage. Mr. Miao said that there will be storage space. The Board said that no attic plan was submitted. Mr. Miao said that there will not be a second floor.

Ms. Miao said that one evergreen tree at the front of the house will be removed. Mr. Miao said that they received a phone call from neighbors who were concerned about a row of evergreens along the property line. He said that they do not plan to touch those trees. He said that they were not shown on the plan because they are so small.

The Miao's said that they had not seen the letter of opposition from the neighbors that was submitted to the Board.

Paul Peterson, 5 Midland Road, said that he and his wife live immediately adjacent to the property. He said that they have four concerns. He said that the driveway to the new two-car garage is not a traditional driveway. He said that there will be a circular driveway at the front of the property. He said that it is a fairly small piece of property. He said that access to the garage will run down the side of the property approximately six feet from the lot line. He said that a parking pad is proposed for the back.

Mr. Peterson said that their side yard faces directly onto the affected space. He said that his patio and barbecue are on that side of his house. He said that over the past 25 years they have planted hemlocks, Japanese maples and birch trees for privacy. He said that they have invested a lot of money into that particular space.

Mr. Peterson said that there are two very large oak trees located on his property that are very close to the lot line. He said that, in addition to the small evergreens on the Miao property, there is a heavily forested screen between the properties. He said that the proposed project will pose a serious threat to the trees. He said that they have lost four maple trees on the street in the past five years. He said that they were told by the Town's Park & Tree Department that there was not adequate drainage into the soil because of the proximity of road. He said that the proposal is for a driveway to run by the trees. He said that with the maple trees gone, the oak and hemlock trees on his property have become a community resource.

Mr. Peterson said that the project will have an aesthetic affect on their property as well as an effect on the well-being of the trees.

Mr. Peterson said that he looked at the plans and determined that the largest tree on the Miao property will have to come down. He said that some smaller trees are very likely to have to come down.

Mr. Peterson said that the density will be greatly increased in terms of structure to land. He said that there will be a 60 percent increase with the one-story addition and the garage. He said that construction of the driveway, garage, addition to the house and expansion of the deck will be a very large undertaking. He said that the project will have adverse effects on the Peterson's financial and aesthetic well-being because their view will be transformed.

Mr. Peterson said that they were disappointed that they were never consulted.

Mr. Peterson recapped his four objections. He said that there is a traditional driveway to the garage on the opposite side of the property which could be used for access. He said that the new driveway will require tree removal and will threaten the well-being of the Peterson trees. He said that it will affect the aesthetic quality of the property and will be inconsistent with the bylaw requirement. He said that the third concern is the increased density and the fourth concern is that they were not consulted.

Mr. Peterson read an excerpt from the Zoning Bylaw. The Board said that it has to consider whether the proposed project will be substantially more detrimental to the neighborhood than the existing nonconforming structure. Mr. Peterson said that it will be detrimental to the neighborhood in the sense that trees will be cut down and existing trees will be endangered.

Mr. Peterson said that was one of his concerns was that the driveway would be impervious surface. The Board said that the driveway will push more water toward the trees. Mr. Peterson said that they were told that the trees were dying on the street because of the location of the road. The Board said that was the result of compaction of the soil over time as traffic goes back and forth over it.

The Board asked about the age of the maple trees on the street that are dying. Mr. Peterson said that he thought that they may be 50 years old.

The Board asked if moving the driveway to the other side of the property would be enough to mitigate Mr. Peterson's objection. Mr. Peterson said that would go a long way. The Board asked if Mr. Peterson was objecting to the aesthetics of the proposed garage and the proposed addition. Mr. Peterson said that the garage will be a big presence even if access is from the other side.

The Board said that the bylaw states that the garage doors must be 30 feet from side lot lines. The Board said that the proposed location of the garage door will be 33.8 feet from the side lot line, approximately 11 feet closer to the Peterson property. Mr. Peterson said that there will be a driveway and a parking pad outside that could easily be used for additional cars.

Carol Burt, 6 Roanoke Road, said that she and her husband are the abutters at the rear of the property. She said that they share a lot of the concerns that Mr. Peterson talked about. She said that they were concerned about the compatibility of the project with the surroundings.

Ms. Burt discussed compaction of the soil. She said that if the project was to go forward, the heavy equipment that would be needed to achieve that would compact the soil. She said that would suffocate a tree within four to five years.

Ms. Burt said that she was concerned about tree screening along the rear of the lot. She said that the construction project could damage existing trees at the back.

Ms. Burt said that the proposed garage will be 35 feet long. She said that it will be almost 17 feet tall. She said that the garage will block sunlight and air circulation to the trees along the property line. She said that damage to the screening trees would affect the Burt's privacy and enjoyment of their backyard.

Ms. Burt said that the configuration of the new driveway would have the headlights coming directly onto the Burt property. She said that the apron on the back line and the construction of the tandem garage would cause increased car activity at the back and would make the Burt property less desirable and would have a negative impact on the Burt property.

Ms. Burt said that the house at 7 Midland Road is very close to the back line. She said that the front of the property has a 55 foot setback. She asked if the front of the house would be a possible location for the

garage. She said that would result in a shorter driveway from Midland Road. She said that less area would be covered by driveways and apron. She said that there would be more open space.

Ms. Burt said that she and her husband object to the proposed plans. She requested that the Board deny the Special Permit because of the significant damage to the enjoyment of the Burt property.

The Board asked if the Burt's have seen any impact from headlights currently. Ms. Burt said that they did not because their property does not back up to the existing driveway.

The Board asked the Miao's if they had considered using the existing driveway. Ms. Miao said that it was her understanding from the architect that the proposed plan was their one good option. She said that they could put the garage at the front but visually the proposed plan would be better. Mr. Miao said that they were told by the Tree Warden that the existing driveway touches the bases of the existing trees. He said that the proposed driveway will be a few feet away from the trunks of the trees. He said that they felt that moving the driveway would be better for the trees in the neighborhood.

Mr. Miao said that the Peterson property is the location of the original garage. He said that the property was divided following a divorce and the Peterson house was built on spec. He said that there was a short driveway that went up to the front of the house by the fence on the nonconforming side at 7 Midland Road. He said that they extended the driveway to the shed at the back in 1988.

Mr. Peterson said that a very large tree will have to come down if the plan moves forward. He said that it is sitting in the middle of a circular driveway that would come around to the back. He said that if the existing driveway was used, the tree would not have to be cut. He said that a lot of the smaller evergreen trees will have to be sheared in order to get cars down the driveway. The Board confirmed that the small evergreen trees are located on the Miao property. Mr. Peterson said that his concern was compacting of the soil.

The Board said that tree roots can be protected during construction. The Board said that using the existing driveway during construction of the garage would prevent compaction of soil at the other side of the house.

The Board said that the garage will be small in comparison to the house. The Board said that the one-story addition will only be a few feet closer to the right side lot line than the existing open porch. The Board said that the garage will be the same distance from the side lot line as the existing house.

Carol Peterson, 5 Midland Road, said that two neighbors whose properties border 7 Midland Road have said that their yard enjoyment will be affected by the proposed driveway with cars coming in and out, with lights and noise. She said that they would not be that affected if the Miao's used the current driveway and put the garage on that side of their house. She said that, in fairness to all of the neighbors who share the green space, the Board should want to preserve it.

The Board said that it is not the function of the Zoning Board to suggest design changes or alternative solutions. The Board said it has to deal with the facts before it and those are the application and the plans. The Board said that except for the existing 2.1 foot side yard setback deficiency, the proposal conforms to the Zoning Bylaw. The Board said that it was unfortunate that the Miao's did not take the opportunity to

speak with the neighbors before submitting their application to the Board but there is no requirement in the bylaw to do that.

Mr. Peterson said that the main concern is maintaining the character of the existing manmade and natural surroundings. He said that with the big tree coming down and the other trees affected, the visual and aesthetic satisfaction of the space will be affected. He said that what they are suggesting is that the Miao's can have a lot of what they want with some adjustments that can meet the concerns of the neighbors. He said that allowing for further conversation would be desirable.

The Board said that shifting the project to the other side would affect the neighbors at 17 Midland Road. Mr. Peterson said that is where the existing driveway is.

The Board said that having a circular drive on a small lot does seem to be a little aggressive. The Board said that the driveway will be pulled in more from the side lot line.

Mr. Miao said that he believes that only one tree will be affected. He said that they intend to keep the hemlocks between the Miao and Peterson properties, which he believes are located on the Miao property. He said that there are no trees on the Burt side of the property. He said that there is a strange fence and mirrors there. He said that he did not think that the project would affect their view. He said that the Burt's have a shed that runs parallel to the proposed garage. He said that he did not believe that it would have a significant effect. He said that their intent is to preserve as much screening as is there and protect the privacy. He said that it is a small tight lot. He said that they tried to work with the architect. He said that it has been a two to three year process.

The Board asked about headlights going down the proposed driveway. Mr. Miao said that the best solution would be to put a fence up between 7 Midland Road and the Burt and Peterson properties. He said that they had discussed the fence with the Peterson's before but the Peterson's wanted a more natural boundary. Mr. Miao said that a more formal fence would make the property line more clear and maintain privacy.

Mr. Miao said that they plan to move two Japanese maples and then landscape the rest of the yard to be consistent with what is currently there.

The Board said that lot coverage will be increased by approximately 500 square feet. The Board said that the driveway pavement will also make the land more impervious. The Board asked what considerations went into dealing with stormwater runoff from the new impervious surfaces. Mr. Miao said that they investigated a grass/concrete combo. He said that there is a novel model with more plastic that allows for more grass coverage.

Mr. Miao said that there are gutters and drywells on all four corners of the house. He said that the addition will have gutters as well. He said that drywells for the garage had not been discussed yet but they would be willing to add them. He said that the land rolls off at the back toward Roanoke Road by a foot or two. He said that a drywell at the back may be necessary.

### Statement of Facts

The subject property is located at 7 Midland Road, on a 11, 250 square foot lot in a 10,000 square foot Single Residence District, with a minimum left side yard setback of 17.9 feet.

The Petitioner is requesting a Special Permit/Finding that construction of 13.5 foot by 32.2 foot one-story addition, an 11 foot by 30 foot deck, and a 16 foot by 35 foot garage that will meet all setback requirements, on an existing nonconforming structure with less than required left side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 9/22/11, stamped by Robert F. Drake, Professional Land Surveyor, existing and proposed Floor Plans and Elevation Drawings, dated 10/24/11, prepared by Clayton Design Services, and photographs were submitted.

On November 28, 2011, the Planning Board reviewed the petition and recommended that the Special Permit be denied.

### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that construction of 13.5 foot by 32.2 foot one-story addition, an 11 foot by 30 foot deck, and a 16 foot by 35 foot garage that will meet all setback requirements, on an existing nonconforming structure with less than required left side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for that construction of 13.5 foot by 32.2 foot one-story addition, an 11 foot by 30 foot deck, and a 16 foot by 35 foot garage, subject to the following conditions:

1. There shall be no plumbing in the garage.
2. The existing driveway shall be removed.
3. Construction of the garage shall be accomplished by using the existing driveway during construction before the driveway is removed.
4. Adequate screening shall be provided to shield any headlights to the abutting properties.
5. A drywell shall be installed on the southwest side of the property to capture the stormwater runoff from the garage.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

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J. Randolph Becker, Acting Chairman

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Robert W. Levy

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David G. Sheffield

cc: Planning Board  
Inspector of Buildings  
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